

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION TO DETERMINE	)	
WHETHER AN ADEQUATE MEANS FOR	)	CASE NO. 90-290
DELIVERY OF GAS IS AVAILABLE TO	)	
BURKESVILLE GAS COMPANY, INC.	)	

O R D E R

This case was established by Order entered October 3, 1990 to investigate whether Ken-Gas of Kentucky, Inc. ("Ken-Gas") had an adequate and reliable supply of gas for its customers for the 1990-91 heating season. Burkesville Gas, Inc. ("Burkesville Gas") was made a party to the proceeding by reason of its application in Case No. 90-294<sup>1</sup> to approve the transfer to it of the assets of Ken-Gas; in its February 21, 1991 Order, the Commission approved the transfer of Ken-Gas's assets to Burkesville Gas.

BACKGROUND

Bill Nickens filed a complaint with the Commission alleging ownership of an intrastate pipeline, the Ft. Knox Transmission Pipeline ("Ft. Knox line"), of which a five-mile section was being used without compensation by Ken-Gas and, subsequently, Burkesville Gas to obtain their gas supply. The five-mile section of pipeline is connected to an intrastate pipeline owned by Kentucky Energy

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<sup>1</sup> Case No. 90-294, The Application of Burkesville Gas, Inc. for Approval of the Transfer and Sale of Ken-Gas of Kentucky, Inc., and Application of Burkesville Gas Company, Inc. for an Order Authorizing the Creation and Issuance of \$1,300,000 of Long-Term Instruments of Indebtedness.

Transmission ("Kentucky Energy"), through which all of Burkesville Gas's gas supply is delivered. This five-mile section already existed at the time Kentucky Energy installed its pipeline which interconnects with a pipeline in Metcalfe County, Kentucky, owned by Texas Eastern Transmission Corporation ("Texas Eastern"), an interstate pipeline company.

A hearing was held on November 28, 1990; and in its April 3, 1991 Order, the Commission found that Burkesville Gas, as the successor to Ken-Gas, had made satisfactory arrangements to secure an adequate supply of gas and ordered the investigation closed. The Commission's decision was based in part on two agreements presented by Burkesville Gas and Ken-Gas at the November 28, 1990 hearing, each agreement entered into by Burkesville Gas and Mr. Nickens. The first agreement was intended to settle all claims that Mr. Nickens had against Ken-Gas for its past use of the five-mile section of pipeline. In the second agreement, Mr. Nickens leased the entire Ft. Knox line to Burkesville Gas, although the terms of this agreement were contingent upon issuance of bonds approved in Case No. 90-294.

However, on May 28, 1991, Mr. Nickens refiled his complaint since neither of the two agreements had been implemented. On July 3, 1991, the Commission reopened this proceeding since Mr. Nickens' renewed complaint, if proven, would represent a threat to Burkesville Gas's access to its gas supply.

On August 20, 1991, the Commission conducted a hearing in which Burkesville Gas and Mr. Nickens argued whether the terms of

the two agreements had been implemented. In addition, Burkesville Gas presented evidence related to the bond issue previously approved by the Commission in Case No. 90-294, but not issued; and provided evidence to demonstrate that it had the ability to deliver gas to its customers.

On October 31, 1991, the Commission entered an Order with the following conclusions of law: the five-mile section of the Ft. Knox line was being used with Mr. Nickens' knowledge to transport gas for another party; Mr. Nickens was operating as a transporting utility and was required to file a tariff with rates and conditions for service; and Ken-Gas as the owner of the gas distribution system and Burkesville Gas as lessee of that system were required to provide adequate service to the customers of the gas system. The Commission ordered Mr. Nickens to maintain the five-mile section of the Ft. Knox line and to file a copy of the lease agreement with Burkesville Gas as a special contract (with its proposed tariff), and ordered Burkesville Gas to establish an escrow account and deposit \$2,400 annually as the lessee of the Ft. Knox pipeline, including the five-mile section.

Burkesville Gas requested and was granted rehearing on the following issues: reconsideration of the Commission's finding that Mr. Nickens is the sole owner of the five-mile section of the Ft. Knox pipeline; presentation of additional evidence on its gas supply and alternate routes available; and Burkesville Gas's responsibility to place funds in escrow. The Commission held a rehearing on February 11, 1992, and Burkesville Gas presented

evidence to support its position that ownership of the five-mile section of line is in dispute. Burkesville Gas also requested that the Commission establish a rate for the use of the pipeline and stated that it is willing to establish an escrow account in which it will deposit revenues for use of the five-mile section of line until ownership is determined. Burkesville Gas also presented additional evidence on its source and supply of gas.

On April 3, 1992, Centran Corporation ("Centran"), the only historical gas supplier to Burkesville Gas (and Ken-Gas previously), requested and was granted intervention. In its filing, Centran stated that it had not supplied Burkesville Gas since September 1991 due to nonpayment for gas delivered during the period June 1991 through September 1991. Centran also stated that gas had been transported by Texas Eastern to Kentucky Energy for Burkesville Gas since September 1991, for which no payment had been made to Texas Eastern. As a result, an imbalance existed on the Texas Eastern pipeline since gas had been taken but not paid for at its interconnect with Kentucky Energy.

A hearing was conducted on June 16, 1992 in part to allow Burkesville Gas to respond to Centran's allegations. Burkesville Gas stated that any gas supplied to customers in and around the city of Burkesville prior to January 25, 1992 was delivered to and was the responsibility of Ken-Gas, and that if any gas was supplied by Centran to Ken-Gas prior to September 1991, and remains unpaid, such debt is also the responsibility of Ken-Gas. Burkesville Gas's position is based upon a January 25, 1992 capital lease agreement

at which time Burkesville Gas assumed the operations of the Ken-Gas system. The capital lease agreement has subsequently become the issue of a Commission investigation in Case No. 92-178.<sup>2</sup>

### ANALYSIS

In order for the Commission to reach a determination on the issue which led to the establishment of this proceeding--an adequate and reliable supply of gas--conclusions must be reached on two related issues: ownership or control of the five-mile section of the Ft. Knox line; and compensation due for its present and continued use.

#### Ownership of the Five-Mile Section

In its October 31, 1991 Order, the Commission stated that Mr. Nickens was the sole owner of the five-mile section of the Ft. Knox line. In that Order, Mr. Nickens was ordered to file a tariff and conditions of service as a transporting utility. As of the date of this Order, Mr. Nickens had made no such filing. Staff has advised the Commission that Mr. Nickens has stated to the Staff orally that he has no intentions of filing a tariff with this Commission. In addition, evidence provided by both Kentucky Energy and Burkesville Gas at the June 16, 1992 hearing reveals that Kentucky Energy has maintained the five-mile section since Ken-Gas began operations in

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<sup>2</sup> Case No. 92-178, Burkesville Gas Company, Inc., Ken-Gas of Kentucky, Inc., and Ken Turner, Alleged Violation of KRS 278.300.

December 1988<sup>3</sup> and, further, that Kentucky Energy has fixed leaks and replaced portions of this pipeline.<sup>4</sup>

In the August 20, 1991 hearing, Mr. Nickens testified that he did not know whether anyone was being served directly from the Ft. Knox line or, in fact, whether the pipeline was being used.<sup>5</sup>

Being otherwise sufficiently advised, the Commission's earlier finding that Mr. Nickens was sole owner of the five-mile section of the Ft. Knox line should be reconsidered. Mr. Nickens has refused to file a tariff with this Commission as a transporting utility or, in the alternative, to file an operating lease through which another party would operate the line. Further, Mr. Nickens has failed to perform maintenance on the Ft. Knox line, including the five-mile section, requiring Kentucky Energy to maintain and repair the five-mile section so that it can be used for the transportation of gas. While alleging ownership, the record in this proceeding shows that Mr. Nickens has failed to perform those actions one typically associates with an owner. The Commission concludes that ownership is unclear and considers Kentucky Energy to be the operator and responsible party for the five-mile section of the Ft. Knox line until the ownership issue is resolved.

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<sup>3</sup> Transcript of Evidence ("T.E."), June 16, 1992, page 142.

<sup>4</sup> Id., pages 32-33, 142-143.

<sup>5</sup> T.E., August 20, 1991, pages 48, 52, 54, and 69.

### Compensation for use of the Five-Mile Section

In its October 31, 1991 Order, the Commission ordered Burkesville Gas to establish an escrow account and deposit \$2,400 per month as rental use for the Ft. Knox line. Burkesville Gas argues that since it only requires use of a five-mile section of the Ft. Knox line, not the entire pipeline, the \$2,400 per month was inappropriate<sup>6</sup> and recommends that the Commission set a rate of \$0.05 per Mcf for use of the five-mile section. The record shows Burkesville Gas had begun depositing \$0.05 per Mcf into an escrow account in May 1992 and will continue to do so until ownership of the five-mile section of the Ft. Knox line had been determined.<sup>7</sup>

Inasmuch as Mr. Nickens has refused to file a tariff with rates and conditions of service, he has no authority to charge or collect monies for operating a transporting utility. KRS 278.160. The ownership of the Ft. Knox line, including the five-mile section in use by Kentucky Energy to deliver gas to Burkesville Gas, remains unclear. The Commission notes that Kentucky Energy and Burkesville Gas have entered into a gas transportation agreement which is the subject of Case No. 92-177,<sup>8</sup> which includes a proposed tariff by Kentucky Energy to operate as a transporting utility. Since ownership of the five-mile section of pipeline is unresolved

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<sup>6</sup> Memorandum on Behalf of Burkesville Gas, Inc., filed March 13, 1992, page 6.

<sup>7</sup> T.E., June 16, 1992, page 108.

<sup>8</sup> Case No. 92-177, Kentucky Energy Transmission, Inc., Alleged Violation of KRS 278.300.

but the pipeline is clearly in use, the Commission concludes that it should reconsider the previously ordered \$2,400 monthly payment and that Burkesville Gas should deposit \$0.05 per Mcf into an escrow account until ownership has been determined.

#### GAS SUPPLY FOR BURKESVILLE GAS

Historically, all gas to Ken-Gas and Burkesville Gas has been provided by Centran. Centran's gas has been delivered via Texas Eastern's pipeline to which Kentucky Energy's pipeline interconnects. While Burkesville Gas has entered into additional supply arrangements, all present sources of gas supply must be transported through the five-mile section of the Ft. Knox line.

The record reflects that Burkesville Gas has two gas supply contracts, CMS Marketing Company ("CMS Marketing") and RCA Energy.<sup>9</sup> Burkesville Gas is currently purchasing all of its supply from CMS Marketing, whose gas is delivered via Texas Eastern's pipeline to Kentucky Energy. This contract replaces the gas supply previously provided by Centran.

According to the terms of the CMS Marketing contract, the quantity and price for the gas are determined monthly with additional volumes available at a negotiated price. The contract is effective for a 12-month period and month-to-month thereafter. Like Centran's arrangements, CMS Marketing's transportation of its gas supply via Texas Eastern's pipeline is subject to interruption, although Centran was never interrupted on the Texas Eastern pipeline while providing gas for Burkesville Gas. In the event of

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<sup>9</sup> T.E., June 16, 1992, pages 20-21, 32, 40-41, 50 and 123.



such an interruption, CMS Marketing has two options available to get gas to Kentucky Energy's receipt point on Texas Eastern through backhaul arrangements with one of two interstate pipelines, both of which are interconnected with Texas Eastern. This arrangement is similar to Centran's arrangement with another pipeline which backed up Centran's supply to Ken-Gas and Burkesville Gas.

The gas supply contract between Burkesville Gas and RCA Energy became effective in December 1990 and commits Burkesville Gas to buying 60 percent of its gas supply needs from RCA Energy's local production wells. Staff has advised the Commission that presently neither party has enforced the terms of the contract, but RCA Energy's facilities are in place to deliver gas. On May 13, 1991, RCA Energy presented evidence regarding the amount of gas it has available.

The record reflects that Burkesville Gas has also proposed as a suitable backup to its CMS Marketing gas supply the installation of a propane-air injection system, and that Burkesville Gas has arranged to purchase such a system from Combustion Services in Georgia for approximately \$50,000 which could be installed in 4 to 5 days, if needed.<sup>10</sup> In order to purchase this system, the \$50,000 would apparently be borrowed.

The nature of an emergency gas supply situation requires immediate action and resolution. An action which requires 4 to 5 days is absurd. Furthermore, the borrowing of \$50,000 for such a purpose, which may require Commission approval, would adversely

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<sup>10</sup> Id., pages 34, 36-38, and 72.

affect Burkesville Gas's already precarious financial condition. Burkesville Gas has the responsibility to immediately rectify any disruption in its gas supply as it occurs.

Based upon the terms of the CMS Marketing and RCA Energy contracts, the Commission concludes that Burkesville Gas appears to have an adequate supply of gas available for its customers. However, since the terms of the CMS Marketing contract include a price determined monthly, Burkesville Gas should establish a purchased gas adjustment ("PGA") clause so that its rates will more accurately reflect its current cost of gas.

After considering the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. Burkesville Gas has entered into gas supply contracts with CMS Marketing and RCA Energy, both of which together should enable Burkesville Gas to provide an adequate and reliable supply of gas to its customers.

2. Burkesville Gas has entered into a gas transportation agreement with Kentucky Energy to transport gas for delivery to Burkesville Gas.

3. Burkesville Gas's gas supply must be transported through a five-mile section of the Ft. Knox line. While Mr. Nickens alleges ownership of the Ft. Knox line, including the five-mile section, ownership is unclear.

4. Mr. Nickens has refused to comply with the Commission's Order of October 31, 1991 to file a tariff with rates and

conditions of service as a transporting utility regarding the five-mile section of the Ft. Knox line.

5. Since Kentucky Energy has operated and maintained the five-mile section of pipeline since Ken-Gas began operations, Kentucky Energy is the party responsible for compliance with Commission regulations regarding operation of the five-mile section.

6. Since ownership of the five-mile section of pipeline is unclear, Burkesville Gas should establish an escrow account to deposit \$0.05 per Mcf, which represents reasonable compensation for use of the pipeline until ownership is determined by a court of competent jurisdiction. Such compensation should cover the period beginning January 25, 1992, the date Burkesville Gas assumed control of the operations of the Ken-Gas distribution system, to the point in time ownership of the five-mile section of pipeline is determined.

7. Burkesville Gas should file monthly reports with the Commission which show the monthly amount deposited in the escrow account and the volume of Mcfs of gas transported monthly over the five-mile section of pipeline. Burkesville Gas should include with these reports copies of its monthly deposit slips for the escrow account. The first report should be filed within 30 days of the date of this Order and should cover the period January 25, 1992 through September 30, 1992.

8. Within 30 days of the date of this Order, Burkesville Gas should file with this Commission a quarterly PGA clause to ensure that its rates reflect its most recent cost of gas.

9. Ordering paragraphs 2, 3, and 4 of the Commission's October 31, 1991 Order should be vacated.

10. The Commission's statement at page 3 of its October 31, 1991 Order that "[T]he five-mile section . . . is wholly owned by Bill Nickens." should be vacated.

IT IS THEREFORE ORDERED that:

1. Burkesville Gas shall comply with Findings 6, 7, and 8 as if each was individually ordered.

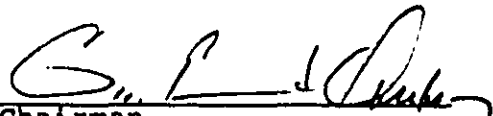
2. Ordering paragraphs 2, 3, and 4 of the Commission's October 31, 1991 Order shall be vacated.

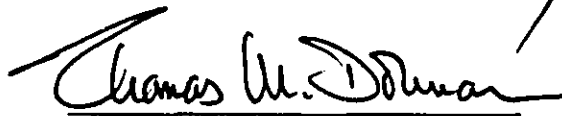
3. The Commission's statement at page 3 of its October 31, 1991 Order that "[T]he five-mile section . . . is wholly owned by Bill Nickens." shall be vacated.

4. This investigation be and it hereby is closed.

Done at Frankfort, Kentucky, this 28th day of October, 1992.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice-Chairman

ATTEST:

  
Executive Director

  
Commissioner